

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WSG 124

Date Signed: November 17, 1998

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MEMORANDUM

SUBJECT: Drinking Water Infrastructure Grants -- Territorial Set-Aside Program

FROM: Robert J. Blanco, Director
Implementation and Assistance Division (4606)
Office of Ground Water & Drinking Water

TO: Alexis Strauss, Director
Water Division
Region IX

Kathy C. Callahan, Director
Division of Environmental Planning & Protection
Region II

The purpose of this memorandum is to provide you with direction on your development and implementation of the Territorial Set-Aside Program which was provided for under Section 1452(j) of the Safe Drinking Water Act (SDWA). The Office of Ground Water and Drinking Water (OGWDW) has recently published Final Guidelines on a similar program under the SDWA – the Drinking Water Infrastructure Grants Tribal Set-Aside Program. *Attachment 1* is a copy of those Tribal guidelines. Since the Territorial and Tribal Set-Aside Programs are quite similar in allowances, limitations, and program administration, our strategy has been to work out the major issues via the Tribal Program and once certain of the appropriate direction for that program, we would use it as the foundation for the Territorial program guidelines.

The Tribal Guidelines were recently signed, copies have been forwarded to Congress under the Congressional Reform Act requirements, a notice of their availability was placed in the *Federal Register* on October 29, 1998, and we can now proceed with the Territorial program. I have decided, however, that development of formal guidelines for the Territorial Program, as originally planned, is not mandatory. There are a few known differences between the two programs which I can address via this memorandum, but in general, I believe it is sufficient to direct you to use the Tribal Guidelines as a framework for developing your Regional Territorial programs.

As for the differences that I mentioned above, I believe there are four that are worthy of note. The first is simply that the SDWA language that provides for the Territorial program is different than that of the Tribal language. *Attachment 2* is an excerpt from the SDWA that contains the Territorial references.

The second involves the amount of funds available to the Territorial program. Section (j) of the SDWA provides that a maximum of 0.33 percent of the "aggregate amount made available to carry out this section" be made available for grants for the four Territories. The "amount available" is the annual appropriation for section 1452 activities less the Tribal Set-Aside and any funds that EPA sets aside for: a) Health Effects Studies, b) Small Systems Technical Assistance, c) Monitoring for Unregulated Contaminants, and d) Operator Certification Reimbursement. In addition, the SDWA does not provide for any other funds (such as external reallocations) to be added to the Territorial Program – 0.33 percent of the "aggregate amount made available" is the maximum allowed.

The third involves the method of distributing the available funds among the four eligible Territories. With the help of your staff, we have developed a formula that OGWDW will use to allot the Territorial funds each year. That formula is explained in detail in *Attachment 3*, along with the actual allotments for FY1997, FY1998 and FY1999.

The fourth difference is that under the Territorial program, Regions may issue grants directly to water systems in the Territories, give a "program" grant to the Territorial government, or do a combination of the two. If the EPA Regional office chooses to award direct grants to public water systems, the Region will be responsible for identifying potential projects, for prioritizing those projects, for selecting the ones to receive funding, and for award and administration of the grants. Under this method, EPA Regions will be required to develop the list of projects in consultation with the Territorial government, and will be required to give all of the systems in the Territory an opportunity to comment on the projects selected and the method of selecting those projects. The expectations are essentially the same as they are with your Tribal program.

If the EPA Regional office chooses to award a "program" grant to the Territorial government, the Territory will be responsible for developing methods of identifying and ranking potential projects, and for selecting the ones to receive funding. The Territorial government would then make subawards to eligible recipients for the individual projects. Under this approach, the Territorial government's project ranking method must be based on the three criteria identified in the SDWA: 1) projects to address the most serious risk to human health; 2) projects necessary to ensure compliance with the requirement of the SDWA; and 3) projects to assist systems most in need on a per household basis. In addition, the Territorial government must establish a method of informing the water systems and the general public about their program, and the methods of project identification, ranking and selection. Your offices will, of course, have the authority to establish guidelines for, and approve, such Territorial programs.

In cases where you award a "program" grant to a Territorial government, you may allow the Territory to use up to 4 percent of the total "program" grant for its administration of the Territorial program. We believe this is appropriate because it will be necessary for the Territory to perform many of the functions that a state is required to perform under the State Revolving Loan Fund program – identification and selection of projects, informing the general public of their program and decisions, award of subgrants, and oversight of the subgrant projects. As the SDWA allows states to use up to 4 percent of their capitalization grants for program administration, we believe it is reasonable to provide the same allowance for a Territory which is administering a Set-Aside Program.

In general, the other provisions, allowances, limitations, and procedures that are contained in the Tribal Set-Aside guidelines apply to the Territorial Program. This includes:

- regulatory authority,
- OMB Cost principles,
- cross-cutting Federal authorities,
- schedule for allotment of funds,
- duration of availability of the funds and potential for an "internal" reallocation
- eligibility of profit vs non-profit water systems,
- creation of "new" water systems,
- newly identified water systems,
- eligible uses of the project funds,
- ineligible uses of funds (except for the allowance for 4% administration mentioned above)
- technical, financial & managerial capacity of a system,
- reimbursement of expenditures incurred prior to receipt of a Set-Aside grant,
- combining Territorial Set-Aside funds with other sources of money,
- matching requirements,
- project identification,
- project prioritization,
- unscheduled emergency projects,
- grant management and oversight, and
- reports to Headquarters.

I ask that you proceed with development and implementation of your respective Regional Territorial Set-Aside Programs. The new year (FY1999) funds, and the FY1997 and FY1998 funds that have been in reserve for the Territorial program will be reprogrammed to you as soon as we receive authority from the Comptroller to do so.

If you have any further questions, please give me a call on (202)260-7077, or have your staff call Ray Enyeart on (202) 260-5551.

Attachments

CC: Walter Andrews (Region 2)
Bruce Kiselica (Region2)
Mark Rasso (Region 2)
Corine Li (Region9)
Jose Caratini (Region 9)

SDWA Text Regarding
The Drinking Water Infrastructure Grants Territorial Set-Aside Program

§1452(j) Other Areas -- Of the funds annually available under this section for grants to States, the Administrator shall make allotments in accordance with section 1443(a)(4) for the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam. The grants allotted as provided in this subsection may be provided by the Administrator to the governments of such areas, to public water systems in such areas, or to both, to be used for the public water system expenditures referred to in subsection (a)(2). The grants, and grants for the District of Columbia, shall not be deposited in State loan funds. The total allotment of grants under this section for all areas described in this subsection in any fiscal year shall not exceed 0.33 percent of the aggregate amount made available to carry out this section in that fiscal year.

The highlighted sections of section (a)(2) apply to projects in the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam.

§1452(a)(2) Use of funds -- Except as otherwise authorized by this title, amounts deposited in a State loan fund, including loan repayments and interest earned on such amounts, shall be used only for providing loans or loan guarantees, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in a State loan fund established under paragraph (1), or other financial assistance authorized under this section to community water systems and nonprofit noncommunity water systems, other than systems owned by Federal agencies. **Financial assistance under this section may be used by a public water system only for expenditures (not including monitoring, operation, and maintenance expenditures) of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 1412 or otherwise significantly further the health protection objectives of this title. The funds may also be used to provide loans to a system referred to in section 1401(4)(B) for the purpose of providing the treatment described in section 1401(4)(B)(i)(III). The funds shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this paragraph and the purchase is from a willing seller.** Of the amount credited to any State loan fund established under this section in any fiscal year, 15 percent shall be available solely for providing loan assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of public water systems.

FORMULA AND SCHEDULE FOR ALLOTING DRINKING WATER SET-ASIDE FUNDS AMONG TERRITORIES

Formula: EPA will use a formula to calculate the annual allotment for the four Territories. The SDWA says that EPA, "shall make allotments in accordance with section 1443(a)(4)". The section referenced gives guidance to EPA on how it is to allot grant funds under the Public Water System Supervision (PWSS) Program. That section instructs EPA to allot PWSS grant funds on the basis of population, geographical area, the number of public water systems, and other relevant factors.

After considering and analyzing many formula options, EPA has selected a formula that:

- uses the five specific factors identified in the SDWA -- population, geographical area, community water systems (CWS), nontransient noncommunity water systems (NTNCWS), and transient noncommunity water systems (TNCWS);
- provides each Territory with a guaranteed minimum allotment; and
- uses information collected through the most recent Drinking Water Infrastructure Needs Survey (DWINS) as the "other relevant factor".

The information (or input data) to be used for each of the six factors will be taken from the following sources.

population -- will be the population figures used in the calculation of the PWSS grants for the same year. These populations are obtained from the most current Census Bureau statistics that are available when the tentative PWSS allotments are calculated.

geographical area -- will be the geographical area information used in the calculation of the PWSS grants for the same year. These areas will be obtained from the most current *Statistical Abstract of the United States* that is available when the tentative PWSS allotments are calculated.

numbers of community water systems (CWS) -- will be the number of systems used in the calculation of the PWSS grants for the same year. These numbers are obtained from the inventories that are contained in the Safe Drinking Water Information System (SDWIS) when the tentative PWSS allotments are calculated.

numbers of nontransient noncommunity water systems (NTNCWS) -- will be a **subset** of the number of systems used in the calculation of the PWSS grants from the same year. The PWSS grant formula uses all current and active NTNCWs that are contained in SDWIS. The NTNCWS inventories used in the Territorial program formula will only include non-profit systems since only non-profit NTNCWSs are eligible to receive grants from the Territorial Program. The EPA Regional Offices and the Territories will be responsible for identifying which NTNCWSs are non-profit and will provide that information to EPA HQ prior to calculation of each year's allotments.

numbers of transient noncommunity water systems (TNCWS) – will be a **subset** of the number of systems used in the calculation of the PWSS grants from the same year. The PWSS grant formula uses all current and active TNCWs that are contained in SDWIS. The TNCWS inventories used in the Territorial Program formula will only include non-profit systems since only non-profit TNCWSs are eligible to receive grants from the Territorial Program. The EPA Regional Offices and the Territories will be responsible for identifying which TNCWSs are non-profit and will provide that information to EPA HQ prior to calculation of each year's allotments.

water system needs -- the information for the infrastructure needs of the water systems will be obtained from the most current Drinking Water Infrastructure Needs Survey (DWINS). As the DWINS is currently required to be updated every four years, the same DWINS information will be used for at least four Territorial Program allotments. The most recent DWINS was published in January 1997. We will use the information contained in that report for allotment of the FFY1997, FFY1998, FFY1999, FFY2000, and FFY2001 Territorial appropriations. The next DWINS is scheduled to be published in February 2001. Based on that scheduled date, EPA would first be able to use the 2001 DWINS report for allotment of the FY2002 Territorial Program budget request and appropriation. The February 2001 DWINS report would also be used for allotment of the FFY2003, FFY2004, and FFY2005 Territorial Program funds.

formula structure -- The Territorial Program formula will value the five traditional factors at 25% of their PWSS formula weights and the DWINS needs at 75%. The resultant individual weights will be: population - 5%, geographical area - 2.5%, combined CWS & NTNCWS - 14%, TNCWS - 3.5%, and DWINS needs - 75%. In addition, like the PWSS formula, the Territorial Program formula will provide each of the four Territories with a minimum allotment. The minimum shall be either \$150,000 or 7.5% of the funds available for the Territorial program, whichever is greater. The intent of this minimum is to ensure that each Territory has the ability to fund at least one project, each year, while at the same time trying to distribute as much of the money as possible in accordance with the relative needs of the public water systems in each Territory.

Schedule: EPA HQ will use the formula twice during each federal fiscal year. The first calculation will be a tentative allotment and will be based on the President's budget request, the most recent DWINS, and the collection of the information necessary to run the PWSS grant formula. The budget submission historically occurs in late January or early February of each year, and the PWSS grant formula information is collected during the same timeframe. However, since the NTNCWS and TNCWS statistics will be limited to the non-profit systems, the inventory data for those categories will be sent to EPA Region's 2 and 9 for adjustment. Once these adjustments are received, EPA HQ will calculate the tentative allotments. EPA's goal will be to complete the calculation by late February or early March of each year.

EPA cannot guarantee that the Regional offices or Territories will actually receive the level of funding identified in the tentative allotments, however, since they are based on the amount of funds that are "requested" from Congress. The purpose of the tentative allotments is to provide Territories and EPA's Regional offices with planning targets on which to base their potential funding decisions for the coming fiscal year.

When EPA receives its appropriation for the year, typically in late summer or early fall, EPA HQ will use the formula to calculate the final (actual) allotments for the year. We will use the same PWSS formula and DWINS information to calculate the final allotments as was used to calculate the tentative allotments for the year, even if more current information has become available. This practice will avoid major changes between the tentative and final allotments, and will provide Regions and Territorial governments with as much stability as possible between the planning and execution phases. If the funds appropriated to EPA are the same as were requested in the President's budget, the final allotments will be the same as the tentative allotments. The only thing that will cause the final allotments to be different than the tentative allotments is an appropriation that is different than the requested budget.

Input Data for Distribution of FY1997, FY1998 and FY1999 Funds:

	Population ¹	Total Geo Area ¹	CWS	NTNCWS ²	TNCWS ²	Needs Survey Needs
VI	97,000	171	132	79	2	\$223,100,000
AS	62,000	90	21	0	0	\$22,500,000
GU	161,000	217	10	0	0	\$106,700,000
NMI	54,000	189	30	0	0	\$35,100,000

- ¹ Population and Geographical area is same as was used to calculate the FY 1999 PWSS Grants. This is most current data and was used each of the first three years.
- ² Includes only non-profit water systems since only the non-profit NTNCWSs and TNCWSs will be eligible for project funding. Statistics on profit vs non-profit were provided by EPA Regional Offices.

Formula Grants for FY1997 and FY1998, and Tentative Grant for FY1999

	FY 1997 (Actual) At SRF Appropriation of \$1,275,000,000	FY 1998 (Actual) At SRF Appropriation of \$725,000,000	FY 1999 (Tentative) At President's SRF Budget Request of \$775,000,000
VI	\$2,438,200	\$1,382,500	\$1,449,000
AS	\$310,900	\$176,300	\$184,800
GU	\$991,600	\$562,300	\$589,300
NMI	\$403,700	\$228,900	\$239,900
Total	\$4,144,400	\$2,350,000	\$2,463,000